

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
April 5, 2006 Session

**MARCIA KEETON v. THELMA RUTH DANIEL, ET AL.**

**Appeal from the Chancery Court for Wayne County  
No. 11487     Stella L. Hargrove, Judge**

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**No. M2005-01199-COA-R3-CV - Filed on October 2, 2006**

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This case involves a dispute over the ownership of a Wayne County home between the mother of a man who died intestate at age forty-seven and the woman who was her son's long-time companion. The home was purchased by the son and his companion together, but it was titled solely in the name of the son. The couple never married, but they held themselves out as husband and wife for many years, including the eight years they lived together in the house. The mother claimed that she was entitled to inherit the house as her son's heir-at-law. The companion argued that she was the rightful owner of the house under a theory of common-law marriage. The trial court rejected that theory, but imposed a resulting trust on the house in the companion's favor because of her substantial contribution to its acquisition and maintenance. The mother argues on appeal that the court should have awarded her the disputed house or, in the alternative, that it should have awarded her one-half of the property, because the companion's contribution amounted to less than half of its actual cost. We affirm the trial court's declaration of a resulting trust, but hold that it should be limited to one-half the property or its equivalent value.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court  
Affirmed as Modified**

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S. and FRANK G. CLEMENT, JR., J., joined.

J. Daniel Freemon, Lawrenceburg, Tennessee, for the appellants, Thelma Ruth Daniel, Jeffery Daniel, Lisa Brown and Joan Inman.

Paul B. Plant, J. Christopher Williams, Lawrenceburg, Tennessee, for the appellee, Marcia Keeton.

## OPINION

### I. A LONG-TERM RELATIONSHIP

Marcia Keeton and Michael Glenn Daniel first met and became friends at the age of thirteen. According to Ms. Keeton, they had “been together” from that time forward, except for a period of about two years between 1978 and 1980 when they separated. They never married, but they moved into a trailer in 1988, where they began living together as if they were husband and wife.

Michael Daniel’s grandmother died in 1996, and her Wayne County home in the town of Collinwood passed to her daughter-in-law Thelma Daniel, who is Michael Daniel’s mother.<sup>1</sup> Mr. Daniel asked his mother if he could purchase the house and the 6.2 acre tract of land upon which it sits. Thelma Daniel offered to sell it to him for its full market value of \$35,000. She asked that the proceeds of the sale be divided equally between herself and all her children, including Michael. He apparently used his share to defray a part of the purchase price and to buy some furniture and accessories for the house.

A mortgage loan was necessary to complete the purchase. The bank was unwilling to lend Michael Daniel the money because of some unpaid debts. He accordingly asked Marcia Keeton to go to the bank with him. On or about May 20, 1996, the loan was negotiated. Ms. Keeton co-signed for the loan, becoming jointly liable on the obligation with Mr. Daniel. Although nobody realized it at the time, Mr. Daniel’s name was the only one that was placed on the warranty deed and on the deed of trust.

The house was not in very good condition when it was purchased, and Ms. Keeton and Mr. Daniel bought building materials and hired contractors to improve it. In 2001, the couple refinanced the property. Once again, Ms. Keeton signed the promissory note as co-obligor. The proof showed that she made substantial contributions to the upkeep, maintenance and repair of the house.

The proof also showed that Ms. Keeton held a job at Murray Ohio Manufacturing Company for at least twenty-six years. Mr. Daniel’s work history was more sporadic, but in December of 1995 he was hired to do highway work for the State, and he remained in that job almost until the time of his death. Ms. Keeton had a checking account in her own name, and when she and Mr. Daniel began living together she added his name to the account, thereby making it a joint account.

Mr. Daniel’s paycheck went into the joint account through direct deposit. Ms. Keeton would deposit part of her own paycheck into the joint account and part into a savings account that she maintained in a credit union at her place of work. Ms. Keeton acted as the money manager for the couple. She withdrew money from her savings account to pay for home improvements, for large

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<sup>1</sup>Thelma Daniel testified that her mother-in-law deeded the property to her and her husband, but reserved a life-estate for herself. Thelma Daniel’s husband died in 1994, so upon the death of her mother-in-law, Thelma Daniel became the sole owner of the property.

household items like appliances, for car repairs, and for other expenses that could be paid for with cash. She paid the recurring household bills from the joint checking account, including the monthly \$350 house payments.

Mr. Daniel was a drinker. He spent several evenings a week hanging out at bars, and he liked to gamble. Ms. Keeton gave Mr. Daniel the money he used for those purposes, as well as for lunches and cigarettes. Several witnesses testified that whenever Mr. Daniel went out on the town, he tended to spend or give away whatever money he had, so Ms. Keeton preserved the financial solvency of the household by giving him what amounted to a limited allowance.<sup>2</sup>

The proof shows that Michael Daniel and Marcia Keeton were extremely devoted to each other. But Ms. Keeton testified that she did not want their relationship to be formalized by marriage until Mr. Daniel stopped going to bars and stopped putting money into poker machines. In September of 2003, Mr. Daniel was diagnosed with cirrhosis of the liver. He stopped drinking after the diagnosis, and he and Ms. Keeton decided to get married in a church ceremony, for which they set a January date. However, Mr. Daniel's condition worsened before the marriage could be performed, and he died intestate on February 2, 2004.

The promissory note signed by Mr. Daniel and Ms. Keeton included a credit life insurance policy on Mr. Daniel. When he died, Ms. Keeton went to the bank to find out what the remaining balance on the mortgage debt was. She learned from the bank representative that the policy paid off the remaining mortgage obligation in full and also learned for the first time that the property had been titled in Mr. Daniel's name alone.

Shortly thereafter, Thelma Daniel and Marcia Keeton got into a dispute after Ms. Keeton removed some personal property from the house which Ms. Daniel believed should have remained in the possession of the Daniel family. This led Ms. Daniel to tell Ms. Keeton to leave the house "and not come back." Ms. Keeton moved into her own mother's home and subsequently filed the complaint that led to this appeal.

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<sup>2</sup>Ms. Keeton testified, however, that after he spent or lost all his money, Mr. Daniel would sometimes borrow in order to keep gambling. She would then have to pay off his gambling debts, often hundreds of dollars at a time, by using money drawn from her savings account. In its final order, the trial court stated "[t]he Court finds plaintiff to be a very credible witness. Mr. Daniel was an alcoholic and financially irresponsible. Plaintiff and Mr. Daniel agreed that because of Mr. Daniel's financial irresponsibility, Plaintiff as the one in charge of finances, would give him a certain amount of cash for his personal use."

## II. COURT PROCEEDINGS

On August 18, 2004, Marcia Keeton filed a complaint in the Chancery Court of Wayne County, naming as defendants the heirs-at-law of Michael Daniel, including Thelma Daniel.<sup>3</sup> She asked the court to recognize her as the widow of Michael Daniel with all the rights implied by that status, to declare a trust on the house she had shared with him, and to enjoin the heirs from disposing of the house and its contents. The trial court granted the injunction upon the posting of a bond by Ms. Keeton.

Ms. Keeton based her claim on two different legal theories. The first theory was that throughout their relationship she and Michael Daniel had held themselves out as husband and wife in Tennessee and in other states, including Alabama and Georgia. She argued that in doing so, they satisfied all the elements of a valid common law marriage in those other states, and that their marriage should accordingly be recognized and be given full faith and credit in the State of Tennessee.

In the alternative, Ms. Keeton argued that by virtue of the payments, work and improvements she made to the home she shared with Michael Daniel, the court should grant her a resulting or constructive trust in the property.

The trial was conducted on March 3, 2005. All of the witnesses who testified as to the nature of the relationship between Ms. Keeton and Mr. Daniel stated that they were a loving couple and that their interactions with one another were no different than might be expected of a husband and wife. Some of the witnesses offered evidence relevant to the claim that their common-law marriage could have been recognized in other jurisdictions. However, since Ms. Keeton has not renewed her common law marriage claim on appeal, we will not detail that testimony.

Marcia Keeton testified in accordance with the facts set out earlier. Her cross examination focused on financial matters. Ms. Keeton testified that Mr. Daniel deposited his entire paycheck into the joint checking account, while she deposited the larger part of her paycheck into her credit union savings account. Bank statements introduced into evidence revealed that in 2003, Mr. Daniel deposited \$13,307 into the joint checking account and Ms. Keeton deposited only \$4,607 into that account. Ms. Keeton acknowledged that these figures were probably typical. Since the payments on the house note were drawn from the checking account, the purpose of this analysis was to suggest that Ms. Keeton's contributions to the property were far less substantial than were Michael Daniel's. However, as discussed earlier, there was evidence that Ms. Keeton used money from her savings account for household bills and purchases as well as to pay Mr. Daniel's debts.

Ms. Keeton's income tax returns from 1999 to 2003 were also entered into the record. She filed those returns as "head of household (with qualifying person)." Ms. Keeton's mother, Bessie

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<sup>3</sup>The heirs-at-law were the mother and the three living adult siblings of Michael Daniel. The mother was the only defendant to take an active role in this litigation, but any references we make to her rights should be understood as applying to the siblings as well.

Keeton, was named as her dependent. Ms. Keeton testified that she generally spent several nights a week in her mother's home, which is located less than two miles from the home that she shared with Mr. Daniel. When Ms. Keeton was asked why she had not filed a joint return with Mr. Daniel, she responded that she and he both used the same tax preparation service, and she just did what was recommended. She also said that Mr. Daniel did not want to file a joint return because he wanted the refund check to come to him so he could spend it.

Ms. Keeton also testified that she and Mr. Daniel intended that both would share ownership of the house, but that neither was aware that her name was not on the deeds. Questioned on cross-examination about her failure to look more closely at the deed of trust, she responded, "Me and Michael is not too smart on legal stuff like that. We just signed whatever they said to sign."

The most contested testimony at trial had to do with a conversation that allegedly took place at the funeral of Michael Daniel. Brenda Faye Horton, a long-time co-worker of Marcia Keeton, testified that she introduced herself to Thelma Daniel at the funeral, and that Ms. Daniel told her that Ms. Keeton had been very good to her son, that she knew that they were planning to get married, and that Michael had told her that if something happened to him he wanted Ms. Keeton to have everything. When she took the stand, Thelma Daniel denied making any such statement, and she testified that she didn't even remember meeting Ms. Horton.

In summary, a review of all the evidence shows that Ms. Keeton and Mr. Daniel shared their incomes and financial responsibilities. They had a long term relationship that included the joint efforts usually associated with marriage.

At the conclusion of the proof, the trial court took the case under advisement. In its final order, which was entered on April 4, 2005, the court noted that it found Marcia Keeton to be "a very credible witness." The court was unconvinced by her common-law marriage argument, but it rendered judgment in her favor, finding that she carried her burden of proof that a resulting trust in the house had been created in her favor. The court placed equitable title to the property in Ms. Keeton, and the Clerk of the Court was ordered to draw a deed divesting title from the defendants and vesting title in Marcia Keeton. This appeal followed.<sup>4</sup>

### **III. A RESULTING TRUST**

A resulting trust is an equitable remedy used to satisfy the demands of justice. *Burleson v. McCrary*, 753 S.W.2d 349, 352 (Tenn. 1988). This court has described resulting trusts as "judge-created trusts or doctrines which enable a court, without violating all rules of logic, to reach an interest in property belonging to one person yet titled in and held by another." *Wells v. Wells*, 556 S.W.2d 769, 771 (Tenn. Ct. App. 1977). Thus, a resulting trust is an equitable creation which enables a court to reach an interest in property which rightfully belongs to a person who does not

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<sup>4</sup>Neither party has addressed the question of common-law marriage on appeal, so we do not find it necessary to discuss that issue any further.

hold title. *Smalling v. Terrell*, 943 S.W.2d 397, 400 (Tenn. Ct. App. 1996); *Estate of Wardell v. Dailey*, 674 S.W.2d 293, 295 (Tenn. Ct. App. 1983).

Resulting trusts prevent unjust enrichment and protect an individual's equitable right to property when the legal title to that property is in the name of another. *In re Estate of Nichols*, 856 S.W.2d 397, 401 (Tenn. 1993). A resulting trust arises where property is acquired under circumstances where equity infers that the beneficial interest in the property is not to accompany the legal title. *Roark v. Bischoff*, 829 S.W.2d 688 (Tenn. Ct. App. 1991).

Such a trust is implied by law from the acts and conduct of the parties and the facts and circumstances which at the time exist and surround the transaction out of which it arises. Broadly speaking, a resulting trust arises from the nature or circumstances of consideration involved in a transaction whereby one person becomes invested with a legal title but is obligated in equity to hold his legal title for the benefit of another, the intention of the former to hold in trust for the latter being implied or presumed as a matter of law, although no intention to create or hold in trust has been manifested, expressly or by inference, and there ordinarily being no fraud or constructive fraud involved.

*In re Estate of Nichols*, 856 S.W.2d at 401 (quoting 76 AM.JUR.2d *Trusts* § 166, pp. 197-98 (1992)).

Depending on the circumstances presented, a court will decree a resulting trust to prevent a failure of justice. *Id.* "These trusts are sometimes called presumptive trusts, because the law presumes them to be intended by the parties from the nature and character of their transactions. They are, however, generally called resulting trusts, because the trust is the result which Equity attaches to the particular transaction." *Roach v. Renfro*, 989 S.W.2d 335, 340 (Tenn. Ct. App. 1998) (quoting Gibson's Suits in Chancery, § 382 (Inman, 6th Ed. 1982)); see also *Smalling v. Terrell*, 943 S.W.2d 397, 400 (Tenn. Ct. App. 1996).

There are a number of situations that can give rise to a resulting trust, the essential ingredient being avoidance of injustice:

While resulting trusts generally arise (1) on a failure of an express trust or the purpose of such a trust, or (2) on a conveyance to one person on a consideration from another--sometimes referred to as a "purchase-money resulting trust"--they may also be imposed in other circumstances, such that a court of equity, shaping its judgment in the most efficient form, will decree a resulting trust--on an inquiry into the consideration of a transaction--in order to prevent a failure of justice.

*In re Estate of Nichols*, 856 S.W.2d at 401 (quoting 76 AM.JUR.2d *Trusts* § 166, 197-98 (1992)).

As this passage indicates, one of the most common situations where a resulting trust is found involves a purchase of property with consideration being paid by one party and title vested in another. See also *Browder v. Hite*, 602 S.W.2d 489, 492 (Tenn. Ct. App. 1980) (including in a list

of circumstances giving rise to a trust “[w]here the purchaser pays for the land but takes the title, **in whole or in part**, in the name of another”) (emphasis added). The theory underlying the finding of a trust in such situations has been explained often:

It is said that the source and underlying principle of all resulting trusts is the equitable theory of consideration. That theory is that the payment of a valuable consideration draws to it the beneficial ownership; that a trust follows or goes with the real consideration, or results to him from whom the consideration actually comes; that the owner of the money that pays for the property should be the owner of the property. Pomeroy’s Eq. Jur. (5th ed), secs. 981, 1031, 1037; 2 Lawrence on Eq. Jur. (1929 ed.), sec. 565.

*Smalling*, 943 S.W.2d at 400; *Livesay v. Keaton*, 611 S.W.2d 581, 584 (Tenn. Ct. App. 1980); *Greene v. Greene*, 272 S.W.2d 483, 487 (Tenn. 1954).

As a general principle, a resulting trust upon land must arise at the time of the purchase, attach to the title at that time, and not arise out of any subsequent contract or transaction. *Smalling*, 943 S.W.2d at 400 (citing *Livesay*, 611 S.W.2d at 584); *Rowlett v. Guthrie*, 867 S.W.2d 732, 735 (Tenn. Ct. App. 1993). Consequently, the beneficiary of a resulting trust must have actually made payment, or incurred an absolute obligation to pay, as part of the original transaction for the purchase of the property. *Rowlett*, 867 S.W.2d at 735; *Livesay*, 611 S.W.2d at 584; *see also In re Estate of Jones*, 183 S.W.3d 372, 379. (Tenn. Ct. App. 2005). Independent conduct subsequent to the purchase generally does not create a resulting trust. *Rowlett*, 867 S.W.2d at 735.

In the present case, the home in dispute could not have been purchased without the participation of Marcia Keeton. By signing the original promissory note, she incurred an absolute obligation to pay as part of the original transaction of purchase. Such an act is by itself sufficient to establish a resulting trust in the absence of evidence to the contrary.

Where payment of consideration for the purchase of the property is clear, the inquiry becomes whether that payment was made under circumstances indicating an equitable interest. Payment of the consideration for property actually creates a presumption that the payor has a beneficial interest.

. . . as a rule a resulting trust arises by operation of law where one person furnishes the consideration for property and the title is taken in another - at least upon adequate proof that the consideration has been furnished. . . . Stated otherwise, a resulting trust ordinarily will be presumed in favor of one who provides purchase money for land taken in the name of another.

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. . . in imposing a resulting trust, the court presumes, absent contrary evidence, that the person supplying the purchase money for the property intends that its purchase will inure to his benefit, and the fact that title is in the name of another is for some incidental reason.

76 AM. JUR. 2d *Trusts* § 179 at 208-09 (1992) and § 169 at 203 (1992).

Resulting trusts may be established by parol evidence, and because of their nature they often are. *In re Estate of Nichols* at 184; *Smalling v. Terrell* at 400; *Bright v. Bright*, 729 S.W.2d 106, 110 (Tenn. Ct. App. 1986); *Estate of Wardell v. Dailey*, 674 S.W.2d 293, 295 (Tenn. Ct. App. 1983). As the appellant points out, a party seeking to establish a resulting trust by parol proof must meet a higher standard than a mere preponderance of the evidence. *Roach v. Renfro*, 989 S.W.2d 335, 340 (Tenn. Ct. App. 1998). In order to sustain a resulting trust in the face of a written instrument, “the evidence must be so clear, cogent and convincing so as to overcome the opposing evidence, coupled with the presumption that obtains in favor of the written instrument.” *Latshaw v. Latshaw*, 787 S.W.2d 9, 11 (Tenn. Ct. App. 1989).

Thelma Daniel seeks to minimize the evidentiary value of Ms. Keeton’s testimony by quoting the following language from *Saddler v. Saddler*, 59 S.W.2d 96 (Tenn. Ct. App. 2000): “The testimony of a single interested witness typically is insufficient to establish a resulting trust by clear, convincing and irrefragable evidence.” 59 S.W.2d at 99. She neglects to mention language which directly follows the above quote, and which sets out a more precise explanation of the burden of proof in such cases:

When the parol evidence of a resulting trust is in conflict with the terms of a written instrument, it is not essential that the evidence remove all reasonable doubt, but it must be so clear, cogent, and convincing that it overcomes the evidence to the contrary and the presumption that exists in favor of the terms of the written instrument.

*Id.*; see also *St. Clair v. Evans*, 857 S.W.2d 49, 51 (Tenn. Ct. App. 1993)

In the present case, there is more evidence to support a resulting trust than just the testimony of one interested witness. It is beyond dispute that Marcia Keeton signed the promissory note that made the purchase of the house possible, and that she contributed to the payments on the note throughout the time she and Michael Daniel lived there. It is also beyond dispute that the couple lived together as if they were husband and wife, sharing and mingling all assets and expenses. Ms. Daniel even concedes that “the testimony is replete with proof that both parties expended money toward the property for the mortgage and other expenses.” Ms. Keeton testified that Mr. Daniel intended that she be co-owner of the house (such intention being supported by the testimony of at least one other witness), and there was evidence that neither she, nor Mr. Daniel, nor Thelma Daniel realized that her name had been omitted from the deed.

Significantly, there was absolutely no evidence introduced in this case to indicate that Michael Daniel harbored any contrary intention other than to share ownership of the home with Marcia Keeton. This case therefore differs from many others, where the court has had to weigh conflicting testimony to determine where the beneficial ownership of property should properly lie. See for example, *St. Clair v. Evans*, 857 S.W.2d 49, 51 (Tenn. Ct. App. 1993) (mother testified that

deed was executed in favor of her son and his wife solely to enable them to use it as collateral for a bank loan, while wife testified that mother intended to give the property to them as a gift).

Finally, the court specifically stated that it found Marcia Keeton to be “a very credible witness.” A court’s determination of fact based on the credibility of a witness is entitled to great deference on appeal, because the trial court is in a unique position to observe the manner and demeanor of those who testify. *Jones v. Garrett*, 92 S.W.3d 835, 839 (Tenn. 2002); *Collins v. Howmet Corp.* 970 S.W.2d 941, 943 (Tenn. 1998); *Fell v. Rambo*, 36 S.W.3d 837, 846 (Tenn. Ct. App. 2000); *Saddler v. Saddler* at 101.

It is apparent to this court that Ms. Keeton has presented clear, cogent and convincing evidence that Mr. Daniel intended for her to be co-owner with him of the disputed property, and we therefore affirm the trial court’s ruling, which created a resulting trust on the property in her favor.

#### **IV. THE SCOPE OF THE TRUST**

Thelma Daniel argues on appeal that “assuming *arguendo* that [Marcia Keeton] is entitled to a resulting trust and that the trial court did not err in so finding, it still erred in vesting the entirety of the property in the appellee when she paid only a portion of the consideration, either as purchase price or improvements.” She argues that the evidence showed that Ms. Keeton contributed no more than fifty percent of the consideration for the property, and possibly less.

For her part, Marcia Keeton contends that the trial court was correct in impressing a resulting trust upon the entire property, in light of her devotion to Mr. Daniel and her contribution to the household they shared. She notes that throughout their relationship, she did everything for Mr. Daniel while his mother did almost nothing. Whether that allegation is true or not, we must focus our analysis not on the quality of the relationship between Marcia Keeton and Michael Daniel, but rather on the nature of the legal interests they established in the disputed property during the course of that relationship.

By co-signing the note for the purchase of the house, Ms. Keeton became eligible for rights in the property potentially equal to, but not necessarily greater than, those of her co-obligor, Michael Daniel. Her willingness to obligate herself on the note, and the payments she made on the note, must be considered the basis for the resulting trust declared in this case. Had the trust been declared when Michael Daniel was alive, it would not have extinguished his interest in the property, but merely reduced that interest to the extent of the equitable interest she possessed.

Michael Daniel never executed a will to name Marcia Keeton as his beneficiary, even though he had been diagnosed with a terminal illness. Under the laws of Tennessee, if an individual dies without a will, his property passes to his heirs-at-law in accordance with the rules of intestate succession. *See* Tenn. Code Ann. § 31-2-101 *et seq.*

Under the circumstances of this case, Thelma Daniel is entitled under the statute to inherit her son's property. But she is not entitled to reach or extinguish the equitable interest in the real property that Marcia Keeton acquired by virtue of her contribution to its acquisition and maintenance. It is well established that a resulting trust may be impressed upon a partial interest in property:

If two persons jointly contribute the consideration for land, and the title is made to one of them only, a resulting trust will arise in favor of the party not named in the conveyance, in proportion to the amount of the consideration furnished by that individual, and the law will presume equal consideration in the absence of proof to the contrary.

24 TENN. JURIS. 142 ,*Trusts and Trustees* § 13 (2001). See also *Greene v. Greene*, 272 S.W.2d at 488.

Based on the record before us, we find that the presumption of equal consideration, and therefore of equal division, is the appropriate basis upon which to divide the property, as well as the most practical method from the vantage point of judicial economy.<sup>5</sup> An equal division is consistent with the proof that Marcia Keeton and Michael Daniel shared all things in a manner typical of husbands and wives.

We leave it to the parties and the trial court to effectuate the award of one-half interest in the house and land to each of the parties.

## V.

We affirm the trial court's finding that a resulting trust arose in the subject property as a result of Marcia Keeton's contribution to its acquisition and maintenance. We modify its order, however, to limit the resulting trust to one-half of the late Michael Daniel's interest in that property. We remand this case to the Chancery Court of Wayne County for further proceedings consistent with this opinion. Divide the costs on appeal equally between the appellant the appellee.

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PATRICIA J. COTTRELL, JUDGE

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<sup>5</sup>Thelma Daniel urges us to remand this case to the trial court for a factual determination of the proportion of the consideration paid by each person, with the resulting trust to be impressed upon the property only in the proportion found by the court. The proof shows, however, that Marcia Keeton and Michael Daniel so thoroughly commingled their financial affairs that any attempted fiscal accounting would likely be inadequate to the task.